Board of County Commissioners

Boulder County Analysis of the Federal Guidelines Regarding PACE Financing

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Vice President Biden recently announced the administration's strong support for PACE (Property Assessed Clean Energy) financing as a key strategy for investment in energy efficiency, in order to meet national goals of climate change and economic recovery. He announced federal investment of over $80 million to support local pilot programs around the nation, and released a set of federal guidelines for programs receiving federal funding.

Boulder County is one of a handful of communities across the country that has implemented such a program, and is the only community to have both implemented on a large scale and used conventional municipal bond financing to fund the finance district. As such, we are in a unique position to understand the likely impact of federal guidelines on the success of PACE programs. While a number of elements of the guidelines are helpful, others are vague or potentially harmful, and important protections are missing.

We are concerned that the unintended effect of these guidelines will be to create significant administrative burdens on local governments administering such programs; place significant process burdens on participating homeowners; increase fixed costs making the program uneconomic for small-scale investments in home energy efficiency; unduly limit the energy efficiency measures that may be financed, thereby restricting homeowners' ability to invest in large-scale efficiency improvements; create significant cost burdens for both local governments and participating homeowners; and undermine the creditworthiness of the PACE bonds, leading to unattractively high interest rates or even making them unmarketable. Taken in total, we believe that as proposed these guidelines could so burden the programs that the PACE model will be unworkable.

Here is a brief response to the proposed PACE financing guidelines:

a. ***No acceleration of special assessment payments*** *in the case of a default in the payment of the annual assessment.*
This will render the bonds used to finance PACE programs to essentially "junk" bond status in many states, not bank-qualified quality, leading most institutional investors to shun them. In Colorado, and other states, this provision is in direct conflict with state law. The principal reason to include acceleration from an investor standpoint is to ensure that the expected cash flow for the District's debt service occurs; without that, a significantly increased reserve fund (financed either via fees imposed on homeowners or from local government funding sources), would be required, increasing costs to the program.

It should also be noted that acceleration on special assessments is standard for all special assessment districts in Colorado; imposing such a requirement would single out investments in clean energy for unfavorable treatment as compared to every other type of investment that is financed through special assessment districts. Colorado is not unusual in that regard; a majority of states have special assessment improvement districts and in a majority of those, bond financing is repaid via special assessments that are accelerated in case of default.

b. ***Assessment reserve funds*** *to "backstop late assessment payments" in order to reduce the risk to private lien-holders of a default.*
It is unclear exactly what is intended by this requirement. The bond rating agencies currently require a reserve account of 6 months as per our October 2009 bond offering (this reserve requirement has already shrunk from the one year requirement we faced when we issued our first PACE bonds in May 2009, indicating that the market is determining an appropriate reserve amount without outside interference). The county has had to help cover the reserve in order to maintain reasonable costs for borrowers (while we will see this investment repaid in the long run, it still requires available funds). Certainly, many local governments do not have the resources to do this and that is precisely one of the reasons that the PACE programs are a useful new tool. It is unclear, then, if this guideline is just a restatement of these market conditions, or an additional reserve requirement beyond that already required by the market. If a reserve account is required as per federal guidelines, the reserve should be moderate in size, not additional to the market requirements, and flexible in terms of funding source (e.g., LID/program participants, local governments, federal guarantees, etc.).

c. *Federally-approved energy efficiency retrofit* ***improvement standards*** *that the projects in these programs must meet.*
Given that we currently have no national standards and no national certifications for many of the various trades involved in retrofitting and improving the existing building stock, this guideline could be a real issue. From Boulder County's perspective, the danger is that local governments will be put in the position of "certifying or approving" contractors in ways that they do not already and will thereby incur additional costs and liability. Guidance language like assure "that homeowners are protected against fraud or substandard work" presents a potential responsibility for contractor/trades oversight that goes well beyond what local governments regulate today (and what is fiscally efficient). Boulder County suggests that PACE programs should instead be allowed to rely on existing inspection and permit requirements and an additional "right to-inspection" clause that has been included in the loan agreements issued through the County.

d. *Federally-approved energy efficiency retrofit* ***business and worker certification*** *standards that these programs must utilize.*
If the federal guidelines simply incorporate existing professional standards for the trades, this could be useful and simple to implement. If not, this could be a significant issue in terms of delaying program implementation as these standards are developed as well as a new cost and burden for already struggling businesses, many of which are locally owned small- to medium-sized businesses.

e. ***Utility bill releases*** *and sharing of information and statistics with state and federal agencies will be "subject to privacy safeguards."*
The Boulder County program is using utility bill releases as a means of monitoring and analyzing program effectiveness. While the privacy safeguards requirement is probably not an issue, we haven't yet tested the applicability of the Colorado Open Records Act (our state version of FOIA) in this regard.

f. ***Estimated savings on utility bills for a participating homeowner must be greater*** *over the period of the financing than the aggregate of the loan expense to the homeowner (estimated savings can include tax credit/rebate incentives.)*
This standard is unnecessarily restrictive. In states like Colorado which currently have relatively low energy costs, this requirement is especially problematic. Further, this standard creates a significant administrative burden, particularly in homes that seek to implement multiple energy efficiency measures (precisely the homes we need to target in order to meet our national, state, and local climate goals) as this would require modeling of the existing conditions in the home and the impact of multiple measures. We recommend utilizing locally-appropriate prescriptive lists of allowed measures instead. In fact, for

programs that accept applications prior to a bond sale, the calculation is impossible prior to the moment the bonds are sold, as the interest rate and payments are not determined until that point. In addition, there are multiple assumptions that can be made about future energy cost escalation, which can lead to dramatically varying estimates of utility bill savings. If it is determined that the provision of locally-appropriate prescriptive lists is not an adequate solution for ensuring the effectiveness of allowed measures, another less restrictive approach should be considered. This new approach should not rely on programs such as weatherization as a guideline, as the programs are vastly different in nature.

The approach we have taken here in Boulder County is to develop a list of allowed measures, all of which are commercially available and have significant benefits in reduction of fossil fuel use and greenhouse gas emissions. Homeowners must attend a workshop which, amongst other things, explains the technical aspects of the measures, ensuring that program participants enter the program with a full understanding of the likely reductions to their utility bills and how this may compare to the assessment payments. The public benefit of this program is from the reduction in fossil fuel use and greenhouse gas emissions; property owners should be allowed to voluntarily invest in greenhouse gas reductions that do not lead to immediate costs savings.

g. ***Financed projects must be either*** *(1) on a list of improvements the energy savings from which are well-documented, OR (2) there must be a home energy audit conducted in accordance with federal guidelines by a contractor meeting federal certifications that shows that the project will result in a net positive out-of-pocket cash flow to the homeowner over the duration of the loan repayment.*
If option one is truly available, then this guideline is reasonable. The approach we have taken here in Boulder County is to develop a locally-appropriate prescriptive list of allowed measures, all of which are commercially available and have significant benefits in reduction of fossil fuel use and greenhouse gas emissions. This is a cost-effective solution that does not create undue administrative burdens and is easy to understand from the homeowner perspective. Regarding option 2, in addition to comment under item f. above, the requirement for a home energy audit, while a good goal for major improvements, adds a major fixed cost to those homeowners that would like to undertake a smaller project. The other challenges with option two relate to the lack of federal guidelines and certifications—at the very least this will put programs on hold until guidelines are adopted and sufficient capacity is built up within the auditor community. Further, depending on the federal guidelines that are developed, this could be anything from an inexpensive clipboard audit (which provides little value in terms of assessing the energy efficiency needs of an individual property) to a full scale audit that requires a HERS score and which can be prohibitively expensive.

h. ***No financing can exceed the expected useful life*** *of the particular improvement being financed.*
If applied as written, local governments would be forced to separately finance each improvement with a different expected useful life, resulting in a program that would be so costly to administer that it will never be used. As it stands now, we are able to look at the sum of the measures financed in each tranche to ensure that the expected useful life of the measures exceeds the life of the financing; this approach is more reasonable and much less costly to administer.

i. ***Financed improvements must be inspected*** *to ensure they have been installed properly and meet federally-created quality standards; if not, then the payment to the contractor must be withheld until it is fixed. (This is noted to be a safeguard for the mortgage lender to ensure that the value of their security is not impaired via the retrofit improvement project.)*
Once again, while inspection is a good goal, it adds significant costs to the program, costs that would not necessarily be in place for those property owners that pursue a HELOC or HEIL for financing energy efficiency improvements. These “federally-created quality standards” may not be the same as the standards established in local building codes. Reliance on local building codes and existing local

regulations in terms of permits and inspections is a more cost effective solution to ensure that work is completed in an appropriate manner. Further, the loan agreements could include a "right to inspect" clause to be utilized in cases of suspected fraud. Under our current program guidelines, Boulder County will not pay the contractor until both the property owner has signed off and we have documentation in hand that shows that the work has passed final inspection by the appropriate jurisdiction overseeing any required building permits. The federal guidelines should allow building inspection approval to serve as this standard. Insulation is one key measure that does not currently require inspection in many instances; in this case, utilizing an insulation card as is common practice and required for many rebates may be a cost-effective and easy to implement solution.

j. Local government ***disclosure standards concerning risks*** *to the homeowners from the loan and potential default on the special assessments are required.*
This does not present an issue if the standards are reasonable, but they are not currently written.

k. Feds will consider creating a federally-financed loan guarantee program to ensure that mortgage lenders and other private lienholders are not adversely impacted by the PACE loan and project.
Boulder County supports this proposal; however, it is unclear when and if this will come to fruition. This provision should be linked to and replace "item b" if instituted. In addition, federal loan guarantees should be enacted before any limitations on acceleration of loans, in order to keep the bonds marketable.

l. Loan size to a particular homeowner cannot exceed ***10% of the property value****.*
This particular guideline will likely impact the more expensive projects, such as renewable energy installations, especially in jurisdictions with lower average home values. A loan cap that combines a percentage and overall cap is reasonable; for example, 20% of the assessors' valuation and $50,000 or some other dollar amount.

m. ***Title work*** *must be done to ensure that all legal owners consent to the financing and that there are no conflicting easements or subordination agreements.*
Like a number of the other guidelines, this could significantly add to the up-front project costs; Boulder County's current approach of using the Assessor's records is easy, inexpensive, and unlikely to lead to serious problems.

n. No loans to properties currently in default or that have been in default in the past 3 years on taxes/assessments, ***nor to any property where there is current default on a mortgage loan.***
Local governments will have to check with every mortgage lender for every property in order to meet this guideline, as there is typically a long lag time between default and the recording of any foreclosure documents. If such a requirement is imposed, it should only force a check that no foreclosure documents have been recorded.

o. There must be a ***<u>current</u> estimate of appraised value*** *to ensure that property-based debt does not exceed same.*
Using Assessor (in Colorado, the elected tax appraiser) "statutory actual value" should be adequate, but there is an issue here as to whether the reappraisal scheme in Colorado will meet the "**current**" standard set forth here, given it occurs only every two years and is based upon market data that is at minimum between 6 and 18 months old. Requiring current appraisals would add a significant cost burden, especially to smaller projects. The guidelines should specifically allow for the use of assessed values.

p. Special assessments should be included in ***escrows*** *set up by mortgage lenders to ensure timely payment.*

The County does not have an issue with this provision and we believe it could, in fact, alleviate a lot of the potential downside for mortgage lenders by itself, reducing the need for some of the other proposed program restrictions.

In addition to the concerns stated above, one important program protection is absent from the guidelines: The federal guidelines should require that PACE programs be administered by state or local governments or special districts. Some states have enacted PACE authorizing legislation that allows contractors and banks to place PACE liens upon a property without the protections to property owners and mortgage holders that are offered by a government run program. Again, this change in and of itself could go a long way to addressing mortgage holder concerns.